STINSON
LEONARD
STREET

H. Russell Frisby, Jr
202.572.9937 **DIRECT**
202.572.9945 **DIRECT FAX**
russell.frisby@stinson.com

December 8, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Comments on the BDAC/Competitive Access to Broadband Infrastructure Working Group – Final Report, dated November 9, 2017 – WC Docket 17-83

Dear Ms. Dortch:

The Edison Electric Institute ("EEI"), on behalf of its member electric companies, has long supported the goal of accelerating broadband deployment across the United States, and has filed comments before the Commission in various proceedings affecting the pole attachment interests of its members. Accordingly, EEI has been closely following the progress and recommendations to the Commission of the Broadband Deployment Advisory Committee ("BDAC") and, in particular, the Competitive Access to Broadband Infrastructure Working Group (the "Working Group").

EEI writes this letter to the Working Group for two reasons. First, in light of the Working Group's public release of its November 9, 2017 Final Report, EEI writes to thank the Working Group and its individual members for devoting their time, energy, and expertise with the Commission to help ensure that all stakeholders have a voice in the acceleration of broadband deployment across the United States.

Second, as an advocate for its members' interests in rules and policies related to pole attachments, EEI writes to share its expertise with the Working Group on several issues related to its Category II proposals. The Working Group's Final Report proposes that utilities take an active (and costly) role in managing the communications space. Consequently, it is critical that the proposals not sacrifice public safety and reliability for the sake of accelerated broadband deployment, and include economic incentives that would enable the envisioned expansive role of utilities in broadband deployment.

Introduction:

EEI is the trade organization that represents all U.S. investor-owned electric companies and its members provide electricity for 220 million Americans, operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports over seven million jobs in communities across the United States. As providers of electricity to much of America and as owners of a substantial number of poles across the United States, EEI members have

considerable expertise in matters concerning communication provider attachment to utility owned poles for broadband deployment, and the interlocking federal, state, and local regulatory schemes concerning pole attachments. Thus, EEI members have a strong interest in ensuring that the Working Group, the BDAC, and the Commission as a whole consider its recommendations for reforming the rules and procedures governing pole attachments.

Utilities Must Be Permitted to Maintain Exclusive Control Over the Electric Supply Space On Their Poles:

When considering attaching a communications device to a utility pole, it is critical to remember that the primary purpose of the pole is to facilitate the distribution and provision of safe and reliable electricity to the electric utilities' customer. Communications attachments are an ancillary use of the pole, and, as the Working Group recognizes, electric utilities are "not in the telecommunications business and do not generally have [economic] incentives, priority or expertise in optimizing telecommunications deployment."[1]

One-Touch Make-Ready ("OTMR") may prove beneficial to new communications attachers to reduce make-ready expense and timelines and shorten the overall attachment process.[2] However, no OTMR proposal should include work performed in the electric supply space.[3]

Simply put, due to the electric load present on utility lines, work conducted in the supply space is significantly more dangerous than work completed in the communications space and utilities alone should perform this work.[4] Unlike communications space work, performing work in the electric supply space requires an onerous process of certified education and training and years long on-the-job apprenticeship to reach journey lineman status and the ability to provide unsupervised electric supply space work.[5]

The Working Group notes that there are "safety and reliability risks" inherent in attaching[6] to utility poles and lines, and offers several proposals aimed at addressing those risks by requiring utilities to maintain lists of self-certifying contractors meeting certain additional qualifications for supply space work.[7]

Despite acknowledging the greater hazards and expertise required to perform supply space work, these proposals effectively cede control over supply space work from the electric utility to unsupervised third-party contractors, hired by communications attachers, without any attendant benefits to attachment acceleration. First, allowing contractors to "self-certify" is

---

[1] BDAC/Competitive Access to Broadband Infrastructure Working Group – Final Report, dated November 9, 2017 ("Final Report"), at 22.
[2] *See* Methods and Practices Committee: Proposal #1 ("OTMR Proposal #1), Final Report at 21-24; Methods and Practices Committee: Proposal #2 (OTMR Proposal #2), Final Report at 25-28.
[3] EEI June 15, 2017 Comments, WC 17-84 ("EEI Comments"), at 32-35; EEI July 17, 2017 Reply Comments, WC 17-84 ("EEI Reply Comments"), at 19-21.
[4] *Id.*
[5] EEI Reply Comments at 20-21]
[6] OTMR Proposal #1, Final Report at 22-24; OTMR Proposal #2, Final Report at 25.
[7] OTMR Proposal #1, Final Report at 22-23 ¶¶ 2-5; OTMR Proposal #2, Final Report at 27-28 ¶¶ 4-7, 9.

insufficient to meet the stringent training and safety certifications required by industry standards and utility regulators. Highly qualified linemen are in short supply, and the years of necessary training cannot be instilled by "self-certification."[8]

Second, currently, the single biggest cause of delay in completing a pole attachment buildout for a new attacher is the completion of make-ready work by the existing attachers in the communications space.[9] While utilities often complete supply space work in weeks, existing communications attachers often take months.[10] The Working Group's OTMR proposals related to the communications space may accelerate this process. But, considering that the Working Group already recognizes the need to distinguish and separate supply-space from communications-space work, [11] where supply space work is required for an attachment, the proposals create ***Two***-Touch Make-Ready.[12] Moreover, make-ready work in the supply space can require pole replacement or other work that must be completed before either the existing or the new attacher can proceed with their communications space work. This complexity and different kinds of make-ready work that can be required demonstrate why OTMR cannot succeed as a one-size-fits-all regulation, but instead must permit the utility to retain control over the supply space. Thus, where a second, supply-space touch will be required, the OTMR supply-space contractor proposals simply do not provide the envisioned benefits[13] or solve the underlying cause of delay—current attachers are not incentivized to perform make-ready work for a new, competing communications attacher.

Additional components of the Working Group's proposals implicate safety and reliability, and should also be reconsidered. For example, the safety and reliability concerns necessitating specialized linemen for supply space work also demonstrate why expanding a requesting attacher's "self-help remedy" should be limited to the communications space.[14] Similarly, the utilization of "joint field surveys" might be beneficial,[15] but is extremely time intensive. Consequently, the current 45-day timeline must be preserved, or else broadband deployment speed will sacrifice safety and reliability of the electric grid. After all, utilities are cognizant and respect their pole attachment obligations; but their pole crews' highest priority is maintaining a safe and reliable electrical transmission system. Finally, utilities should keep control over the form of pole attachment applications. Indeed, given the complexity of and variance between individual pole networks, attacher roll-out plans, and resultant negotiated attachment agreements, the Working Group should not include a "Most Favored

---

[8] *See* EEI Reply Comments at 20-21.
[9] *See* EEI Comments at 32-35.
[10] *Id.*
[11] *See* OTMR Proposal #1, Final Report at 21-24 (distinguishing "simple" from "complex" make-ready work and supply space from communications space work); OTMR Proposal #2, Final Report at 25-28 (same).
[12] "Conclusion," OTMR Proposal #2, Final Report at 28 ("For more complex applications that require work in or above the power space, there may be a need for a second set of qualified contractors due to the heightened complexity and safety concerns for this type of work.").
[13] *See* EEI Reply Comment at 20-21 (explaining the inefficiency and increased cost in contracting for a supply-space qualified contractor to perform communications space work).
[14] *See* Timing and Process Committee Proposal #4, Final Report at 38.
[15] *See* Timing and Process Committee Proposal #2, Final Report at 29.

Nation" recommendation that would "allow attachers to 'MFN' . . . into any applicable pole attachment agreement with the owner."[16]

In sum, keeping electric supply space make-ready work and communications space make-ready work separate preserves needed safety standards and allows attachers to more quickly and cost effectively utilize lower tier line workers certified for communications space work. Accordingly, utilities must continue to exercise exclusive control over the electric supply space on their poles.

The Real Costs of a Pole and Attachment Database Greatly Exceed The Hoped-For Benefits:

When considering the value of a pole and attachment database, the Working Group should consider not only the hoped-for benefits, but also the very real and significant costs. On balance, the burdens of the proposed data disclosures[17] far outweigh the benefits new attachers would receive from this information.[18] Additionally, there are significant national security and public safety risks in compiling such a database,[19] which the proposals do not adequately address.

The Working Group acknowledges that the goal of its proposal is to "to provide economic incentives that help to align the interests of various private parties so that they can voluntarily reach the most economically efficient results."[20] The "high-level" database proposal, however, simply does not provide the economic incentives necessary to outweigh the staggering costs of creation and maintenance.[21]

There appears to be consensus among comments filed by pole network owners that the costs of such proposals would vastly outweigh the benefits to be gained by attachers and should not be adopted.[22] To reduce the costs of creation, the Working Group suggests that this database can be assembled from "existing databases . . . currently operated by owners."[23] However, no such comprehensive databases exist: as detailed in the Comments of the Coalition of Concerned Utilities, utility pole owners do not maintain information concerning the location of attachments on individual poles and often do not retain records of the attachment activities of ILECs that share poles through joint use or joint ownership

---

[16] OTMR Proposal #1, Final Report at 23 ¶ 4.
[17] Other Infrastructure and Transparency Committee: Proposal #1 ("Database Proposal #8"), Final Report at 50-53; Other Infrastructure and Transparency Committee, in Conjunction with the Methods and Practices Committee: Proposal #2 ("Database Proposal #9"), Final Report at 54-68.
[18] EEI Comments at 35-36; EEI Reply Comments at 16-19.
[19] *See Id.*
[20] Database Proposal #8, Final Report at 51.
[21] Database Proposal #9, Final Report at 54-68.
[22] EEI Reply Comments at 18; *See e.g.* EEI Comments at 35-36; Coalition of Concerned Utilities June 15, 2017 Comment ("Coalition of Concerned Utilities Comment") , WC 17-84, at 53-59; CenturyLink June 15, 2017 Comment, WC 17-84, at16; AT&T June 15, 2017 Comment, WC 17-84, at 24-25; Frontier June 15, 2017 Comment, WC 17-84, at 20-21.
[23] Database Proposal #9, Final Report at 54 ¶ 3.

agreements.[24] This should not be a surprise—it is significantly less expensive for utilities to conduct ad hoc physical surveys of affected poles only when an outage occurs or improvement is planned than to comprehensively and constantly track tens of thousands of poles as communications attachers come-and-go. Requiring utilities to collect this information, therefore, would require a pole-by-pole field study of each pole owner's entire network, which can account for pole numbers in the millions.[25] The Coalition of Concerned Utilities has studied this issue, and estimates that completing a single survey could take four years and $30,000,000 per one-million poles surveyed.[26] Furthermore, due to the fast changing nature of utility pole attachments, keeping this data up-to-date would prove to be a near impossible task. By the time a single system-wide survey could be completed (several years),[27] the data for poles first surveyed would have long since become obsolete and near useless for attachers attempting to utilize the data to accurately predict the on-the-ground status at individual poles. The task of providing real-time pole data would require continuous surveys and ad hoc updates to utility records. Therefore, the costs of assembling the detailed, multi-element database the Working Group envisions are staggering.

In contrast, the benefits to prospective pole attachers are of limited commercial value. Due to the rapidly changing specifics of utility pole networks, collected information would become out of date soon after publication.[28] The Working Group's vision of real-time database updates as entities and contractors perform work affecting the pole-network will also be undermined by OTMR and self-help remedies. Already, the incidence of unauthorized attachments is increasing.[29] Such unauthorized attachers are unlikely to self-report their unauthorized activities for the sake of the database, especially when OTMR empowers the new attacher to completely bypass the pole-owner and current attachers through hiring a private contractor. Furthermore, a database has commercial value *only* during the limited attachment-planning phase of a pole-attachment's lifespan. As soon as an entity completes attachment work, the database becomes a competitive liability opening up propriety location information to competing broadband attachers.[30] Thus, the commercial value of a database is limited, but the costs are enormous.

Although the Working Group proposes that the Commission establish the database as a public resource and fund its creation through "usage fees or licenses," unavoidably, the costly burden of initially assembling and then managing the necessary data would fall on pole-owners.[31] The Working Group appears to understand that "the costs of this database would be substantial" and user fees and licenses would not adequately defray the costs, and suggests that "federal funds" could be used to compensate pole-owners for their

---

[24] Coalition of Concerned Utilities Comment at 53-59.
[25] EEI Reply Comments at 18-19.
[26] *Id.* (citing Coalition of Concerned Utilities Comment at 53-59).
[27] *Id.* (explaining that utilities would require many years to survey the millions of poles in their vast networks).
[28] EEI Comments at 36; EEI Reply Comments at 19.
[29] EEI Comments at 32-33.
[30] EEI Reply Comments at 19.
[31] *See* Database Proposal #9, Final Report at 54-68.

required efforts.[32] Although the availability of Federal funds—perhaps through a grant system—could help fill the incentive gap, it nonetheless amounts to a significant taxpayer subsidy for a database that will provide no direct value to either electric ratepayers or broadband consumers. Moreover, until such time as Congress approves such a program[33] and appropriates funds, electric utilities and their ratepayers would bear the brunt of the database's costs, while communications attachers reap a windfall.

Finally, although the Working Group proposal acknowledges the necessity of "security," the general suggestion that "[a]ccess to the data should be controlled by multiple security methods" does not adequately address national security and public safety concerns.[34] The threat to national security and public safety should not be dismissed so readily. Information concerning the nation's electric and telecommunications grid, including pole and conduit locations is Critical Energy Infrastructure Information utilities are required by statute and regulation to keep from the public domain for public safety and national security concerns including terrorist and cyber attacks.[35] Consequently, security should be a core consideration in any database proposal and the commercial value of a database must be discounted to appropriately account for the inherent security risks and associated costs.

Additional Economic Incentives Are Needed To Encourage Utility Pole-Owners To Take The Active Role The Proposals Require:

Throughout the proposals, the Working Group notes that "[p]ole owners often appear uninterested in managing the attachment processes in the communications space on a pole."[36] This is a bit of a mischaracterization—utility pole owners have an interest in pole attachments because those attachments affect poles vital to the utility's core mission of electrical generation and transmission.[37] Not only is managing the attachment process in the communications space outside of a utility's core-expertise, but current attachment rates and make-ready fees do not incentivize a utility to take on a more active and even more costly role.

As the Working Group sagely opines, the underlying goal of its proposals should be "to provide economic incentives that help to align the interests of various private parties so that they can voluntarily reach the most economically efficient results. By way of example, increased pole attachment rates could influence pole owners to install more capacity."[38]

---

[32] *Id.* at 54-55.
[33] *See* Database Proposal #9, Final Report at 55 ¶ 7 (suggesting "federal funding or congressional allocation" and a "fund similar to the Highway Fund").
[34] Database Proposal #9, Final Report at 65.
[35] EEI Reply Comments at 19; *see* EEI Comments at 35-36.
[36] OTMR Proposal #2, at 26 ¶ 6.
[37] *See, generally*, EEI Comments; EEI Reply Comments; *see also, e.g.*, Coalition of Concerned Utilities Comment.
[38] Database Proposal #8, Final Report at 51.

Current rates, however, simply do not incentivize utilities to build extra communications-attachment capacity into their pole-networks, let alone to develop the necessary communications expertise to take the proposed active role in managing communications space contractors. Therefore, as the Working Group considers and debates its various pole attachment proposals, it should keep in the forefront of its mind that to be successful, a proposal must align economic incentives with the desired entity behavior. Thus, just as incumbent attachers must be incentivized to work collaboratively with new attachers, so to must utility pole-owners be incentivized to take on a more active and costly pole-attachment management role.

Please contact the undersigned if you have any questions.

Sincerely,

Stinson Leonard Street LLP

H. Russell Frisby, Jr

HF:SLS

cc: Ken Simon, Working Group Chair